

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN MICHAEL BROOKS,

Petitioner,

v.

JACK WARNER,

Respondent.

Case No. 3:22-cv-05486-JLR-TLF

ORDER GRANTING MOTION TO
LIFT STAY AND AMEND
PETITION AND SETTING
BRIEFING SCHEDULE

The District Court has referred this 28 U.S.C. § 2254 action to United States Magistrate Judge Theresa L. Fricke. Currently before the Court is petitioner John Michael Brooks' motion to lift stay and for leave to file an amended petition for writ of habeas corpus (Dkt. 37) and petitioner's subsequently filed proposed amended petition (Dkt. 43). After review of the motion and the relevant record, the motion (Dkt. 37) is granted.

BACKGROUND

On July 1, 2022, petitioner signed his petition for writ of habeas corpus under 28 U.S.C. § 2254. Dkt. Petitioner challenges his custody under a Cowlitz County Superior Court judgment and sentence. Dkts. 1-1, 8. On July 29, 2022, the Court issued an order to show cause that the petition contained both exhausted and unexhausted claims, and directing petitioner to notify the Court of his choice to either: (1) dismiss the mixed petition without prejudice, allowing him to present his unexhausted claim in state court

1 and then return to federal court to file a new habeas petition containing all of his claims;
2 (2) stay the mixed petition to allow the petitioner to present his unexhausted claims to
3 the state court and then return to the federal court for review of his perfected petition; or
4 (3) delete the unexhausted claim and proceed with the remaining exhausted claims.
5 Dkt. 4. On August 3, 2022, petitioner filed a response requesting that the action be
6 stayed. Dkt. 5. The respondent agreed to a stay of the action. Dkt. 16. On December
7 12, 2022, the Court issued an order granting the motion to stay and abey proceedings.
8 Dkt. 17.

9 On August 31, 2024, petitioner filed the pending motion requesting the Court lift
10 the stay and grant him leave to file an amended petition to include, it appears, his
11 previously unexhausted claim. Dkt. 37.

12 On January 11, 2025, petitioner filed a complete, signed, and dated, proposed
13 amended petition. Dkt. 43.

14 DISCUSSION

15 Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure,

16 (1) ***Amending as a Matter of Course***

17 A party may amend its pleading once as a matter of course within: (A) 21 days
after serving it, or

18 (B) if the pleading is one to which a responsive pleading is required, 21 days
after service of a responsive pleading or 21 days after service of a motion under
Rule 12(b), (e), or (f), whichever is earlier.

19 (2) ***Other Amendments***

20 In all other cases, a party may amend its pleading only with the opposing party's
written consent or the court's leave. The court should freely give leave when
21 justice so requires.

22 While it appears petitioner cannot amend as a matter of course at this time,
23 respondent has filed a response to the motion to lift the stay and for leave to file an
24 amended petition stating they do not oppose the motion and did not object to

petitioner's subsequently filed proposed amended petition. Dkt. 38. Further, as this is a habeas corpus action, the Court finds justice requires allowing petitioner to amend.

Therefore, petitioner's motion (Dkt. 37) is GRANTED. The stay is lifted. Petitioner's proposed amended petition (Dkt. 43) is hereby deemed filed as petitioner's amended petition.

Respondent has requested 45 days to respond to the amended petition. Dkt. 38. Therefore, the Court orders the following briefing schedule:

(1) Respondent's answer to the amended petition is due on or before **March 14, 2025**. Respondent is directed to note their answer for **April 11, 2025**.

(2) Petitioner's response to the answer is due on or before **April 4, 2025**.

(3) Respondent may file a reply to petitioner's response on or before **April 11, 2025**.

The Clerk is directed to docket petitioner's proposed amended petition (Dkt. 43) as petitioner's amended petition. As the amended petition supersedes the petition, the original petition is deemed moot.

The Clerk is directed to send a copy of this order to petitioner and counsel for respondent.

Dated this 28th day of January, 2025.



Theresa L. Fricke
United States Magistrate Judge